

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

In re T.M., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

T.M.,

Defendant and Appellant.

A135646

(Alameda County
Super. Ct. No. SJ11018042-01)

A juvenile wardship petition (Welf. & Inst. Code, § 602, subd. (a)) charged appellant T.M. with two felony counts of lewd acts with a minor (Pen. Code, § 288, subd. (a)). Following a contested jurisdictional hearing on April 26, 2012, the court sustained both allegations. The court declared T.M. a ward and subsequently ordered an out-of-home placement. A timely notice of appeal was filed on June 4, 2012.

Assigned counsel has submitted a *Wende*¹ brief, certifying that counsel has been unable to identify any issues for appellate review. Counsel also has submitted a declaration confirming that T.M. has been advised of his right to personally file a supplemental brief raising any points which he wishes to call to the court's attention. No supplemental brief has been submitted. As required, we have independently reviewed the record. (*People v. Kelly* (2006) 40 Cal.4th 106, 109–110.)

¹ *People v. Wende* (1979) 25 Cal.3d 436.

We find no arguable issues and therefore affirm.

BACKGROUND

On the afternoon of October 29, 2011, T.M. and his mother visited the home of his aunt in Alameda. Kylie, T.M.'s eight-year-old cousin, was also at home. T.M., who was then 15 years old, and Kylie went together to her room to play video games. T.M. and Kylie were alone in the bedroom for about 15–20 minutes. T.M. came out of the bedroom saying he was hungry, and he and his aunt went to a convenience store to buy some snacks. While they were gone, Kylie came out of the bedroom and told T.M.'s mother that T.M. had touched her. When T.M. returned, his mother asked him, “[W]hat did you do?” T.M. was defensive and appeared nervous, speaking loudly. Kylie was very nervous and scared, and her mother took her into the bedroom to talk to her. When asked if T.M. “[d]id . . . something to you,” she said, “Yes.” When her mother asked “Did he touch you?,” Kylie said, “Yes,” and burst into tears. Kylie told her mother that T.M. put his hands in her pants, touching her vagina and her buttocks. When confronted by his aunt, T.M. said that Kylie had only asked him to help her fix her pants. After T.M. and his mother left, the police were called and Kylie gave a statement. Later on that day, Kylie wrote a letter about her feelings and what had happened. About two weeks after the incident, Kylie was taken by her mother to the CALICO Center where she gave a videotaped statement.

At the jurisdictional hearing, Kylie testified that T.M. had asked her to sit on his lap and she did. After playing video games, T.M. pulled down her pants and underwear and said, “surgery.” She told T.M. to stop, but he did not and said nothing in response. Kylie said that T.M. touched “her private” and her “butt” with his finger and put his finger inside both for a few seconds. On cross-examination, Kylie admitted that she had once falsely told people at school that her house had burned down. Over defense objection, the court received the videotaped interview of Kylie into evidence under

Evidence Code section 1360, as a statement describing child abuse or neglect made by child under age of 12.²

T.M. testified that he had played video games with Kylie, but he denied asking Kylie to sit on his lap or touching her as she described. He said that Kylie asked him to help her pull up her pants. Although he thought it was a bad idea, he did so because she asked him to. He testified that he held onto her waistband with his first two fingers just inside and hitched the pants up. He denied deriving any sexual pleasure from this.

The court found Kylie's testimony to be extremely credible and T.M.'s not credible, and found the allegations of the petition true beyond a reasonable doubt.

A psychodiagnostic evaluation of T.M. was prepared by the Guidance Clinic, and a dispositional report was submitted by the probation department. T.M. was found to be ineligible for an outpatient treatment program due to his continued denial of responsibility for the charged offenses.³ The court expressed concern about T.M.'s psychiatric, psychological, and physical well-being, particularly in light of a history of behavioral problems at school "demonstrating poor impulse control and poor judgment." The court found that T.M.'s parent had failed or neglected to provide proper maintenance, training and education for him, and that T.M.'s welfare required that

² Defense counsel objected that Kylie's videotaped statement was inadmissible under *Crawford v. Washington* (2004) 541 U.S. 36 (*Crawford*). Evidence Code section 1360, subdivision (a) provides: "In a criminal prosecution where the victim is a minor, a statement made by the victim when under the age of 12 describing any act of child abuse or neglect performed with or on the child by another, or describing any attempted act of child abuse or neglect with or on the child by another, is not made inadmissible by the hearsay rule if all of the following apply: [¶] (1) The statement is not otherwise admissible by statute or court rule. [¶] (2) The court finds, in a hearing conducted outside the presence of the jury, that the time, content, and circumstances of the statement provide sufficient indicia of reliability. [¶] (3) The child either: [¶] (A) Testifies at the proceedings. [¶] (B) Is unavailable as a witness, in which case the statement may be admitted only if there is evidence of the child abuse or neglect that corroborates the statement made by the child."

³ T.M.'s mother also refused to acknowledge his responsibility for the offenses.

custody be taken from his parents. (Welf. & Inst. Code, § 726, subd. (a).) T.M. was referred for placement in a family home or group home.

DISCUSSION

We find no arguable issues. T.M. was represented by competent counsel throughout the proceedings. We find no error in the court's admission of the videotape of Kylie's interview. Assuming that Kylie's statements in the CALICO interview were testimonial under *Crawford*, the Supreme Court made clear that "when the declarant appears for cross-examination at trial, the Confrontation Clause places no constraints at all on the use of his prior testimonial statements. [Citation.] . . . The Clause does not bar admission of a statement so long as the declarant is present at trial to defend or explain it." (*Crawford, supra*, 541 U.S. at pp. 59–60, fn. 9.)

While T.M. apparently continues to profess his factual innocence, " "[t]he decision of the juvenile court or superior court may be reversed on appeal only upon a showing that the court abused its discretion in its commitment of the minor. A reviewing court must indulge in all reasonable inferences to support the findings of the juvenile court, and such findings will not be disturbed on appeal when there is substantial evidence to support them. [Citations.]' " (*In re Jose R.* (1983) 148 Cal.App.3d 55, 59–60.) In evaluating the sufficiency of the evidence, " " "the power of an appellate court begins and ends with the determination as to whether, on the entire record, there is substantial evidence, contradicted or uncontradicted, which will support the determination" ' [Citation.]" (*People v. Semaan* (2007) 42 Cal.4th 79, 88.)

In determining whether there is sufficient evidence to support a court's findings, we review the entire record in the light most favorable to the prosecution to see if any rational trier of fact could have been so persuaded. (*People v. Hovarter* (2008) 44 Cal.4th 983, 996–997.) It is the exclusive province of the trier of fact to determine the credibility of a witness and to resolve evidentiary inconsistencies, and we must defer to the factfinder's credibility resolutions. (*People v. Young* (2005) 34 Cal.4th 1149, 1181.) " " "It is blackletter law that any conflict or contradiction in the evidence, or any inconsistency in the testimony of witnesses must be resolved by the trier of fact who is

the sole judge of the credibility of the witnesses.’ ” (*People v. Watts* (1999) 76 Cal.App.4th 1250, 1258–1259.) When differing inferences “can reasonably be deduced from the facts, a reviewing court is without power to substitute its deductions for those of the trial court,” and “it is of no consequence that the trial court believing other evidence, or drawing other reasonable inferences, might have reached a contrary conclusion. [Citations.]” (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 874.)

T.M.’s notice of appeal focuses on the court’s dispositional order. A juvenile court’s dispositional order may be reversed on appeal only upon a showing the court abused its discretion. “ ‘ “We must indulge all reasonable inferences to support the decision of the juvenile court and will not disturb its findings when there is substantial evidence to support them.” ’ [Citation.]” (*In re Robert H.* (2002) 96 Cal.App.4th 1317, 1330.) In determining the appropriate placement for T.M., the court made the necessary findings that removal from the home was required, and considered the psychodiagnostic evaluation of T.M., the probation department recommendations, and T.M.’s troubled behavioral history. No error is shown.

DISPOSITION

The judgment is affirmed.

Bruiniers, J.

We concur:

Jones, P. J.

Simons, J.